SUBJECT: Choosing Between Acquisition and Assistance Instruments

NEW MATERIAL: This Notice provides tips for SO Teams on choosing between acquisition and assistance instruments.

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POLICY

**USAID/General Notice
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08/17/2000**

**Subject: CHOOSING BETWEEN ACQUISITION AND ASSISTANCE
INSTRUMENTS**

Part of the duties of Strategic Objective (SO) Team members is to make decisions regarding the most appropriate type of instrument(s) to be used to implement the various activities under a Strategic Objective. There are a wide range of implementing instruments available, however, for the most part, USAID implements activities via acquisition or assistance instruments. This guidance assumes that your decision has already been narrowed down to either acquisition or assistance. It does not address factors to be considered when choosing from the larger pool of available implementing instruments. Your Contracting Officer and/or Legal Advisor should be consulted to assist SO teams with criteria and application of implementing instruments outside of the acquisition and assistance arena.

U.S. Government regulations define acquisition and assistance (A&A). These definitions, in and of themselves, do not provide much help when you are choosing the right mix of instruments to implement your programs.

USAID has no preference for acquisition instruments over assistance instruments (or vice versa). In June 1998, a General Notice addressing the choices between acquisition and assistance instruments stated, "The intent of this Notice is to unequivocally state that the Agency does not have a preference on choice of instrument and that either type of instrument may be structured as results-oriented." Available historical award data demonstrates that the usage of assistance awards compared to acquisition awards has remained a fairly constant collective 55/40 ratio (the remaining 5% being inter-agency agreements). Experience has largely shown that a Strategic Objective is best achieved by a mix of instruments by taking advantage of the strong points of the distinct relationships USAID enters into as a result of using either assistance or acquisition.

ADS 304 assigns responsibility to the SO Team for the initial determination regarding the "...purpose of the transaction and the intended nature of the relationship." The Contracting Officer, as a member of the SO Team, is responsible for "...approving the selection of the proper implementation instrument." The Agency Procurement Executive is responsible for making a final determination on choice of instrument if there is an impasse between the Contracting Officer and the other SO team members.

Choosing an instrument type is not an exact science and there is no one factor that determines whether an acquisition or assistance award is the more appropriate instrument for the implementation of an activity. Rather, the SO Team chooses an instrument by careful and thorough analysis. The following factors may aid you in the decision-making process:

(1) **Nature of the Activity:** There are no clear categories of activities that are better suited for one type of instrument over the other. In fact, at the very earliest stages of activity planning, the design can be tailored toward the use of either type of instrument. The role USAID desires to play in the activity implementation, however, is a key consideration in selecting instrument type.

With acquisition, USAID states what goods/services/results it wants to buy, then monitors and evaluates the Contractor's performance in providing these goods/services/results. USAID decides the requirements and standards, and frequently provides technical direction during contract implementation.

By contrast, with assistance, USAID has more limited involvement in the day-to-day operational control of the activity. The program is largely the Grantee's/Recipient's, with USAID ensuring (prior to award) that the proposed program supports a Strategic Objective. Example: Where a politically sensitive situation exists, it may be necessary or desirable for USAID to have more day to day operational control and oversight of the implementation of a program. If the SO Team believes this level of involvement is needed, acquisition would be the more appropriate choice of instrument.

(2) **Type of Implementing Organization:** There are no restrictions with respect to what type of organization (e.g., PVO, profit-making firms or non-profit organizations) may receive an acquisition or assistance award. Normally, most profit-making firms propose for acquisition awards while most non-profit organizations and universities propose for assistance awards.

It may be that one source of confusion on the "type of implementing organization" is the May 1995, USAID Policy Principles. These principles set forth an understanding with respect to choice of instrument as follows: "This Policy Statement applies to the award of grants and cooperative agreements, which is the preferred method of cooperation between USAID and the PVO/NGO community. When contracts are solicited by USAID, the FAR/AIDAR procedures will be used, and PVOs and NGOs seeking such contracts will follow those

regulations." These statements appeared to be a "commitment" to always use assistance awards when dealing with the PVO/NGO community. However, this simply means that USAID anticipates that most of USAID's engagement with PVOs/NGOs will be through assistance, but when the correct instrument is a contract, then acquisition rules apply even if the implementing organization is a PVO/NGO.

There is a basic flaw in interpreting the Policy Principles as guaranteeing the use of assistance instruments to an organization type: in the Planning Phase (where choice of instrument is made), it is the activity that is identified - not the organization. Consideration of the types of organizations that are leaders in a sector and likely to submit proposals for given solicitation may be one factor in choosing an instrument; however, there is no practical way to select an instrument based purely on organization type during the Planning Phase.

The type of implementing organization may come into the decision making process as follows: If there is a convergence of views among the SO Team (including host country and other non-USAID representatives) that the preponderance of knowledge and/or expertise in a given activity is with organizations who usually receive grants, then the SO Team would use this information as part of the overall consideration. The same thing would hold true if the expertise were with an organization that generally receives contracts.

(3)   Achieving Results: Both acquisition and assistance instruments can be written to achieve results. With acquisition, the contract can incorporate "performance-based" contracting methods, and, with assistance, grants and cooperative agreements may be "results-oriented." Remedies for failure to achieve stated results and outcomes, although different between these instrument types, are available for both acquisition and assistance instruments.

(4)   Sector and Stakeholder Considerations: In general, acquisition and assistance are equally appropriate instrument types for any sector (e.g., Democracy, Health, Population, Environment, Education, Energy, etc.). However, SO Teams should scan the environment of the proposed activity, and answer questions such as "Are there any issues that support the use of one instrument type use over the other?"

Example: Where there isn't political will within the host government to reform Institutions or policies, use of assistance initially may be most appropriate as a means to start building support for reform since assistance provides a more "hands-off" relationship.   Some sectors may more readily lend themselves to one type of instrument over the other.   Humanitarian Assistance, for example, is often carried out by Public International Organizations (PIOs) under assistance awards.

(5)   Lessons Learned: When a proposed activity is a "follow-on" to an activity being implemented, SO Teams should carefully evaluate the effectiveness of the instrument type of the existing award. Even if the current instrument is working well, the SO Team will want consider the kinds of requirements it needs in the follow-on activity that may lead to a different instrument for that activity.

(6)   USAID Resources: The type of instrument that the SO Team selects has direct implications on USAID resources. In general, acquisition instruments are more labor intensive than assistance instruments, requiring more substantial direct USAID support. When the Team is determining an instrument type, it should pay careful attention to what resources are available for administration of that instrument.

Example: In a small country program, the SO Team may want to consider whether there is enough staff to handle both contracts and grants. If staffing is limited, then the SO Team may need to rely heavily on one or the other depending upon the Strategic Objective.   In non-presence or closeout countries, it's generally advisable to use assistance only since there is no staff or diminishing staff in country to provide the type of oversight and support normally required for administration of contracts.

SO Teams need to consider all factors and issues carefully when it makes its determination of the most appropriate instrument type.   When the SO Team does this, its rationale for choosing a particular instrument will be well-documented and based upon sound business practices.

This guidance will become a mandatory reference to ADS 304.

Point of Contact: Any questions concerning this Notice may be directed to Barbara Brocker, M/PE, (202)712-0824, or Margaret Dula, (202)712-5162.

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